

In the Matter of License No. 147486 and all other Seaman Documents
Issued to: WILLIAM PROVENZANO

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1048

WILLIAM PROVENZANO

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 6 May 1957, an Examiner of the United States Coast Guard at New York, New York, suspended Appellant's seaman documents upon finding him guilty of negligence. Three specifications allege that while serving as Third Mate on board the American SS MOLINE VICTORY under authority of the document above described, on or about 19 March 1956, Appellant negligently failed to make proper allowance for leeway and set; failed to use an available large scale chart; and failed to call the Master, when in doubt as to position, as required by Standing Order Number 11. The first two specifications allege that Appellant's negligence contributed to the grounding of the vessel.

At the beginning of the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by counsel of his own choice, both at the original hearing and when the hearing was reopened. He entered a plea of not guilty to the charge and each specification.

The Investigating Officer made his opening statement. He then introduced in evidence the testimony of the Fourth Mate, the Master, a Coast Guard Investigating Officer, and a representative of the Prudential Steamship Corporation. Also introduced were the Night Order Book of the SS MOLINE VICTORY, log entries from the Bridge Log Book of the SS MOLINE VICTORY for 18 and 19 March 1956, H.O. Chart 3923, and British Admiralty Chart 1645.

In defense, Appellant testified in his behalf, and when the hearing was reopened, introduced the recorded testimony of the Master, given at his hearing. Also introduced were H.O. Chart 3923, British Admiralty Chart 1645, and the Beaufort Scale of Wind Force.

At the conclusion of the hearing, the Examiner considered the

written arguments submitted by the Investigating Officer and Appellant's counsel. The Examiner then rendered the decision in which he concluded that the charge and three specifications had been proved. An order was entered suspending all documents, issued to Appellant, for a period of 2 months outright with an additional 2 month suspension upon a probationary period of 8 months. The decision was served on 10 May 1957. Appeal was timely filed on 24 May 1957.

FINDINGS OF FACT

On 19 March 1956, Appellant was serving as Third Mate on board the American SS MOLIN VICTORY and acting under authority of his License 147486 when the ship ran aground while bound for Izmir, Turkey.

The MOLINE VICTORY is a victory-type vessel of 7627 gross tons and 439 feet in length. She was in a light condition with a draft of 13 feet, 7 inches forward and 14 feet, 9 inches aft.

At 2200 on 18 March 1956 the Master had entered night orders in the Night Order Book and left it on the bridge. These stated that speed should be adjusted to maintain 14.2 knots so as to arrive at Izmir at 0600. Further that when N. Sigri Light was abeam to port at a distance of 3.5 miles, the vessel should proceed another 5 miles on course 188 degree true and change course to 126 degrees Gyro, 128 degrees true (2 degrees easterly Gyro error), so as to pass 5.5 miles off Kara Burnu Lighthouse. From that point, the vessel was to keep at least 2.5 miles off the land. The Master left the bridge at 2200.

During the 2000 to 2400 watch and Appellant's watch, the wind was from the northeast, force 4 to 5 (13 to 24 m.p.h.). The sky was overcast but the weather was clear and visibility good with a moderately rough sea. It was dark until after the grounding at 0340. The ship's radar was inoperative. Other equipment was functioning properly prior to the accident.

Appellant assumed the bridge watch at approximately 2355 while the ship was on course 188 degrees true. H.O. Chart 3923 was in use. Appellant did not subsequently use the larger scale B.A. Chart 1645 which was available. At 0000 on 19 March, N. Sigri Lighthouse was abeam to port, 5 miles distant. The ship had been set about 1.5 miles to the west while on southerly courses for the past 2 1/2 hours. At 0015, Appellant changed course to 126 degrees Gyro. At 0128, Kolp Kallonis Light was abeam to port, 6.5 miles away. At 0135, speed was increased from 90 to 95 r.p.m. At 0318, Appellant logged Kara Burnu Light, which is on the northwest point of Kara Burnu Peninsula, abeam to starboard, 4.8 miles away. For the 26 miles since passing Kolp Kallonis Light abeam, the ship had made

good a speed of 14.2 knots. At 0318, Appellant changed course to 126 degrees true and at 0325 he again changed course to 122 degrees true. At 0339, Appellant sighted Uzun Ada Light bearing 127 degrees true. Realizing that he was to the right of the plotted course line, he ordered left wheel. At 0340, the MOLINE VICTORY grounded inside the small island of Buyuk Saip off the northeast shore of Kara Burnu Peninsula. The ship would have cleared this island by about one mile if the course of 126 degrees Gyro (128 true) had been made good after passing abeam of Kolp Kallonis Light at 0128.

It was three days before the vessel was freed by a Turkish tug. The vessel suffered damage in excess of \$800,000. There were no injuries to personnel as a result of this casualty.

Appellant has no prior record.

BASES OF APPEAL

The appeal is based on the following grounds:

1. The Decision and Order are contrary to law.
2. The Charges do not constitute actionable offenses.
3. The Decision is not supported by substantial evidence.
4. The Decision is contrary to the facts on the record.
5. The Appellant was denied a full, fair and impartial hearing.
6. The Examiner was under the dominion and control of the Coast Guard.
7. The Examiner was incompetent to determine a navigational question.
8. The Investigating Officer concealed pertinent and exculpatory evidence.
9. The facts found by the Examiner are not supported in the record.
10. The findings are contrary to established principles of navigation.
11. There is no causal connection between the grounding and the Appellant's acts or omissions.

12. The Examiner's opinions are not supported in the record.

13. The Investigating Officer, with the consent of the Examiner, defaced and altered the exhibits.

APPEARANCE: Harry D. Graham, Esquire, 76 Beaver Street, New York 5, New York.

OPINION

Appellant's bald assertion that the Examiner was prejudiced against him finds no support in the record of these proceedings. On the contrary, his demeanor throughout and his decision to reopen the hearing demonstrates complete impartiality and fairness. Nor is there any showing that the lack of practical navigation experience resulted in the Examiner making an erroneous conclusion regarding the problems here involved.

The first two specifications allege acts of omission which contributed to the grounding of the MOLINE VICTORY. The evidence supports the conclusion that the Appellant's failure to take cognizance that the vessel was making leeway (due to the wind) and his failure to adequately compensate for that evinces negligence, contributing to the grounding of the vessel, since there were factors involved which Appellant either knew or reasonably should have known or anticipated. Shortly after the Appellant came on watch, he determined that the vessel was about 1.5 miles to the west of her course line when the vessel was passing N. Sigri Light. This drift to the west occurred in a 2 1/2 hour run prior to midnight with a force 4 to 5 wind on the vessel's port quarter. During Appellant's entire watch the same wind acted upon the vessel near her beam. Although the vessel ran in the lee of Lesbos Island during the earlier part of Appellant's watch, her distance off the island increased from 5 to approximately 15 miles from 0000 to 0318 when Kara Burnu Light was abeam. With the previous condition of leeway to the west in mind, and with a vessel in a light condition, together with a beam wind which had an increasing effect as the vessel moved away from the lee shore of Lesbos Island, Appellant should have realized that an appreciable divergence to the right of her course line would be experienced, particularly where the sweep from Mitilini Channel, which was to the north, was encountered. Nevertheless, he failed to question the Master about the course he set (128 true) which did not make any allowance for leeway, or set from currents. From the fact that Appellant continued on course 128 degrees true until Kara Burnu was abeam, it is apparent that Appellant took none of these factors into consideration and did not make allowances for them even though there was considerable sea room to the north of Kara Burnu Peninsula which could have been utilized to stay well clear of the latter peninsula and nearby

islands. In fact, the course set by the Master did not apply beyond Kara Burnu Light. After this light was abeam, the orders were to keep at least 2.5 miles off the land. A course made good of 128 true would have taken the ship about one mile from land.

Let us, for a moment, assume the Appellant was correct in stating that Kara Burnu was 4.8 miles from the vessel at 0318. This would indicate a drift at a rate of less than 0.4 knot in the one hour and 50 minutes (26 miles) from Kolp Kallonis. Based on the 0318 position, Appellant altered course 2 degrees to the left and at 0325 altered an additional 4 degrees to the left, steering 122 degrees true. Twenty-two minutes and 5.3 miles from Kara Burnu, the vessel grounded in a position 1.7 miles south of the course line which the Appellant laid down 4.8 miles off Kara Burnu. Accepting Appellant's position off Kara Burnu as correct, the vessel then made good a course of 140 degrees true and was set down at the rate of 4.6 knots between Kara Burnu and the place where the vessel grounded. That degree of drift seems extremely improbable in view of the earlier rate of 0.4 knot.

The two minor course changes Appellant made at 0318 and 0325 were intended to bring the vessel back on her course line at a point only about one mile off Buyuk Saip Island. This action demonstrates that Appellant still failed to allow for any leeway or possible error in his estimated 0318 position; and that he was not attempting to comply with the Master's order to keep at least 2.5 miles away from land.

Based on the wind light ship conditions, and the improbability of a sudden, very strong set, from the currents of Mitilini Channel it is logical to conclude that the MOLINE VICTORY was considerably less than 4.8 miles away from Kara Burnu Light when she passed that light, meaning that Appellant positioned the vessel incorrectly. It is my opinion that this was the case due to negligent oversight on Appellant's part in failing to provide for leeway and set after changing course to 128 degrees true. The average rate at which the ship was set to the right of her after changing course was approximately the same as for the 2 1/2 hours before changing course. The first specification is supported by substantial evidence.

The second specification alleges that the Appellant was negligent in failing to use the best navigational equipment available; namely, the large scale British Admiralty Chart 1645 of the area. I am satisfied that the evidence clearly establishes that the Appellant failed to use that chart. Since that chart has greater detail which might have enabled Appellant to prevent the ship's grounding, the failure, on the part of a licensed officer, to use that chart constituted negligence which contributed to the

grounding of the MOLINE VICTORY.

Specification three alleges that the Appellant negligently failed to call the Master in accordance with Standing Order No. 11 of the Night Order Book. That order provides that the officer on watch is to call the Master if he thinks the ship is setting toward land or danger; or, if he is in any doubt about the ship's position or the proper course to pursue. There is no doubt that the Appellant did not know the position of the vessel and that the course he was pursuing would endanger the vessel. That is proved by the fact of grounding. However, there is no evidence that the Appellant did not think he knew the ship's position or that he was in any doubt as to the course to pursue. The fact that the Appellant was wrong in his assumptions as to the ship's position does not prove that he had any doubt in his own mind. What a man thinks is a subjective thing and since there is no direct evidence to contradict Appellant's testimony that he thought he knew where the ship was until one minute before the grounding, the specification has not been proved and must be dismissed.

Specifications one and two having been found proved, the order suspending the Appellant's documents for two months outright and two months on eight months' probation is considered well within the justified limits.

ORDER

The order of the Examiner dated at New York, New York, on 6 May 1957, is AFFIRMED.

J. A. Hirshfield
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 27th day of June, 1958.